

JAMES AND LILLIAN CHUDNOW

IBLA 84-759

Decided May 14, 1985

Appeal from a decision of the Montana State Office, bureau of Land Management, notifying lessess of the termination of oil and gas lease M-50065 (SD).

Affirmed.

1. Oil and Gas Leases: Relinquishments

An oil and gas lease may be relinquished by filing a written relinquishment in the proper BLM office. A relinquishment is effective on the date of its filing with BLM. However, a partial relinquishment filed after the lease has automatically terminated by operation of law is ineffective.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Where rental payment for an oil and gas lease with a June 1 anniversary date is postmarked May 31 and received in the proper office on June 5, under 43 CFR 3108.2-1(a) such action may constitute reasonable diligence for purposes of class I reinstatement; however, where the payment is less than the full amount and the lessee fails to pay the full amount within 20 days after the anniversary date, class I reinstatement is precluded.

APPEARANCES: James M. Chudnow and Lillian Chudnow, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

James M. Chudnow and Lillian Chudnow appeal from a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 25, 1984, terminating their oil and gas lease M-50065 (SD). The lease, encompassing 1,632.3 acres, was issued to appellants, effective June 1, 1982. Each appellant owned a 50 percent interest in the lease.

On June 5, 1984, appellants filed with BLM a copy of a partial relinquishment of the lease. Appellants sought to retain 521.42 acres covered by the lease. On the same date they filed a rental payment of \$ 522 and the partial relinquishment with the Minerals Management Service (MMS) in Denver, Colorado.

On June 25, 1984, BLM forwarded appellants an oil and gas lease termination notice stating that the lease had terminated on the anniversary date of the lease, June 1, 1984, for failure to pay the entire rental. BLM found that the partial relinquishment was not acceptable because it was not filed until June 5, 1984, 5 days after the termination of the lease. BLM also informed appellants of their right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement) and pursuant to 30 U.S.C. § 188(d) (1982) (class II reinstatement). ^{1/} BLM's lease termination notice set forth the conditions for reinstatement under both class I and class II.

Appellants did not petition for reinstatement. Instead, they filed an appeal in which they argue that "NEW REGULATIONS ALLOWED PAYMENT TO BE SENT EVEN AS LATE AS JUNE 1," and that they sent the rental payment along with the relinquishment to MMS on May 31, 1984. They state that they also sent a copy of the relinquishment to BLM. Appellants contend that BLM's termination of the lease constitutes error because they have no control over when mail is delivered. Appellants claim that they provided the Government with proper notice of their relinquishment.

[1] We initially address appellants' purported partial relinquishment of the lease. Pursuant to 30 U.S.C. § 187(b) (1982), a lessee may at any time file a written relinquishment for all or part of the lease and such relinquishment is effective as of the date of filing. See 30 U.S.C. § 187 (1982); J. M. Dunbar, 62 IBLA 119, 121 (1982); Humble Oil & Refining Co., 64 I.D. 5 (1957).

43 CFR 3108.1 provides:

A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in the proper BLM office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and surety to make payments of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. [Emphasis added.]

^{1/} The oil and gas regulations were amended July 30, 1984 (effective Aug. 29, 1984), to provide specific regulations for reinstatement under various classes. 49 FR 30446-50. Class I regulations are found at 43 CFR 3108.2-2(a). 49 FR 30448-49. There is no substantive change from the previous requirements in 43 CFR 3108.2-1(c). 48 FR 33673 (July 22, 1983). New regulations govern class II reinstatements. 43 CFR 3108.2-3 (49 FR 30449).

Both 30 U.S.C. § 187(b) (1982) and 43 CFR 3108.1 mandate that a relinquishment shall be effective on the date of its filing. See J. M. Dunbar, supra at 121; M. A. Machris, 63 I.D. 161, 163 (1956). A relinquishment of an oil and gas lease is effective from the first moment of the day on which it is filed. Elmer F. Garrett, 66 I.D. 92, 93 (1959), citing Humble Oil & Refining Co., supra. In this case, the effective date of filing was June 5, 1984. However, the lease had terminated on June 1, 1984, for failure to pay the rental. Thus, the relinquishment was ineffective because the lease had terminated before the relinquishment was filed. BLM therefore properly found the relinquishment to be unacceptable.

[2] Appellants argue that new regulations allowed them to send the rental as late as June 1. This is an apparent reference to 43 CFR 3108.2-1(a), 48 FR 33673 (July 22, 1983), which provides:

(a) Except as provided in paragraph (b) of this section, any lease on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the proper BLM office or the designated Service office, as appropriate, on or before the anniversary date of such lease. If the proper BLM office or the designated Service office, as appropriate, is closed on the anniversary date, payment received on the next day the office is open to the public shall be deemed timely filed. A remittance which is postmarked by the U.S. Postal Service, common carrier or its equivalent (not including private postal meters) on or before the lease anniversary date and is received in the proper BLM office or the designated Service office, as appropriate, no later than 20 days after such anniversary date shall be considered as timely filed.

Regarding that regulation the Board has stated:

The revised regulation is worded in a manner which implies that the lease may be considered not to have terminated if the payment, postmarked by the anniversary date, is received within 20 days after the anniversary date. See 48 FR 33655 (July 22, 1983) (comments to regulatory revisions). Such an interpretation would run afoul of the unambiguous statutory provision that leases terminate automatically by operation of law "upon failure of lessee to pay rental on or before the anniversary date of the lease" or the first official working day thereafter. 30 U.S.C. § 188(b) (1976). However, the regulation may provide an appropriate new standard for reasonable diligence under the reinstatement provisions.

Anthony F. Hovey, 79 IBLA 148, 151 n.1 (Grant, A.J., concurring). Accord William P. Branscome, 81 IBLA 235, 236 (1984).

Even if mailing the payment on May 31 is considered as reasonable diligence, no relinquishment had been filed on or before the anniversary date.

Appellants tendered payment based on the reduced lease acreage rather than the full amount owing, and the failure to pay the full amount within 20 days after the lease anniversary date precludes reinstatement under 30 U.S.C. § 188(c) (1982) (class I). See Jerry D. Powers, 85 IBLA 116, 119 (1985); Samson Resources, 71 IBLA 224, 229 (1983). 2/

While appellants indicate they are not interested in class II reinstatement, 3/ we note that they are not entitled to it in any event. In order to be eligible for class II reinstatement appellants had to file a petition for reinstatement together with required back rental within 60 days of receipt of BLM's decision notifying them that the lease had terminated. See 30 U.S.C. § 188(d)(2)(B)(i) (1982). This they failed to do.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

R. W. Mullen
Administrative Judge.

2/ Appellants' partial payment of \$ 522 was less than one third of the full rental amount of \$ 1,633. Appellants were not entitled to a Notice of Deficiency pursuant to 43 CFR 3108.2-1(b).

3/ In their statement of reasons appellants stated: "We are not interested in any 'changed terms' as in your new 'reinstatement' procedures." (Emphasis in original).

